



Transcript of

State of Nevada

Board of Finance

March 12, 2014 – 1:00 PM

Guinn Room
101 N. Carson Street
Carson City, NV 89701

Grant Sawyer State Office Building
555 E. Washington Avenue, Suite 5100
Las Vegas, NV 89101

Nevada State Board of Finance
Special Meeting of the State Board of Finance
March 11, 2014 – 1:00 PM

1 Board members present:

2 Steven Martin

3 Controller Kim Wallin

4 Treasurer Kate Marshall

5

6 Others present:

7 Mark Mathers, Chief Deputy Treasurer/Ex Officio Secretary to the Board of Finance

8 Richard Foreman, State Treasurer's Office

9 Dennis Belcourt, Deputy Attorney General, Attorney General's Office

10 Alan Rabkin, General Counsel, Heritage Bank of Nevada

11 Robert List, Senior Partner, Kolesar & Leathem

12 David Pope, Sr. Deputy Attorney General, Attorney General's Office

13 Randall Theisen, General Counsel, Western Alliance Bank

14 John Guedry, President, Bank of Nevada

15 William S. Boyd, Board of Directors, Western Alliance Bancorporation

16 M. Nafees Nagy, Board of Directors, Western Alliance Bancorporation

17 Don Snyder, Board of Directors, Western Alliance Bancorporation

18 James E. Nave, Board of Directors, Western Alliance Bancorporation

19 John Sande III, Western Alliance Bancorporation

20 Art Marshall, Western Alliance Bancorporation

21 Todd Marshall, Western Alliance Bancorporation

22 Jonathan Winn, Kolesar & Leathem

23 George Burns, Financial Institutions Division

24 Ed Zamora, Financial Institutions Division

25 Mike Dang, Financial Institutions Division

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1 Bruce Breslow, Director, Department of Business & Industry

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5 Marshall: Mr. Mathers, can you call roll?

6 Mathers: Steve Martin?

7 Martin: Here.

8 Mathers: Controller Wallin?

9 Wallin: Here.

10 Mathers: Treasurer Marshall?

11 Marshall: Here.

12 Mathers: And we were informed this morning that Member David Funk and
13 Chairman Sandoval would be recusing themselves from this meeting.

14 Marshall: Okay. Do we have a quorum?

15 Mathers: Yes, we do.

16 Marshall: Okay. I think what we -- if the Board members don't mind, if we just do
17 Agenda Item No. 1. Are there any public comment? There will be public
18 comment by legislative statute at the end, as well as there is at the
19 beginning. So is there any public comment in Las Vegas?

20 Martin: Not at this time, no.

21 Marshall: Is there any public comment in -- this is before we get to our meeting -- or
22 before we get to another Agenda item. Is there any public comment in
23 Carson?

24 Rabkin: Yes, there is.

25 Marshall: Okay. Sir, did you want to do it now or did you want to do it at the end?

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1 Rabkin: I'm going to do it now, if I can.

2 Marshall: Please come to the dais.

3 Rabkin: I have some extra handouts if anyone would like them.

4 Mathers: Thank you.

5 Mathers: Mr. Martin, we will fax these down to you.

6 Martin: And we haven't been provided anything down here.

7 Mathers: You have not?

8 Martin: No, we have not.

9 Mathers: Okay.

10 Marshall: Sir, would it be okay if you sat -- because we're recording this. And if you
11 could sit near one of the speakers there. Would that be fine?

12 Rabkin: That would be perfect.

13 Marshall: The cameras and the TV will change so you can see down in Las Vegas.

14 Rabkin: Perfect.

15 Marshall: And if you'll just state your name for the record, please.

16 Rabkin: My name is Alan Rabkin. I'm the general counsel of Heritage Bancorp and
17 its sole bank subsidiary Heritage Bank of Nevada. Both of those entities I
18 just mentioned are domestic Nevada corporations approved by the State of
19 Nevada as financial institutions. We have served this state for almost 15
20 years and we are growing very rapidly, and are considered to be a successful
21 and well-managed institution.

22 I have a brief discussion of the first agenda item before you. And I wanted
23 to present our position because our position may be supportive of one or the
24 other parties, but I wanted to make sure that this Board knew about our
25 position ahead of the argument.

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1 I'm aware of the issues before the Board regarding the appeal of the denial
2 of the use of the Bank of Nevada named to an entity that voluntarily chose
3 to exit Nevada, as its domestic state regulator. And instead adopt an
4 Arizona regulator. As I understand the problem, this Arizona bank, which
5 merged Bank of Nevada into itself, wishes to continue to use for its Nevada
6 branches a name that seemingly represents to the Nevada banking
7 community that the branches remain and are still a Nevada charter bank.

8 We understand that the Nevada commissioner of banks warned Bank of
9 Nevada of this issue. But we all know that having proceeded in the face of
10 this warning, that the Nevada branches are now owned by an Arizona
11 institution. This was a decision, in the view of Heritage Bank of Nevada, by
12 Bank of Nevada that may or may not have been provident. But it was a
13 decision they made knowing precisely this issue.

14 I am not familiar with the operations of Bank of Nevada. I do not know
15 much about that bank. I am not here to be critical of Bank of Nevada or any
16 other bank. However, I am very familiar with the "of Nevada" name issue
17 before you right now because I have directly faced this issue before at
18 another bank. I will soon tell you about that situation.

19 In my three decades of representing banks operating in Nevada, both as
20 inside and outside counsel, I have served many of our well-known banks
21 serving Nevada, as well as serving the United States as its counsel. Some of
22 these banks were national banks, some were out-of-state banks, and many
23 were Nevada domesticated banks. That list included Valley Bank of
24 Nevada, Bank of America, Truckee River Bank, Sierra West Bank, and
25 Bank of the West, along with Heritage Bank of Nevada, my current

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1 employer.

2 I believe I may be one of the most experienced bank counsels in Nevada
3 today, and many of Nevada laws on banking were penned or co-drafted by
4 myself or in conjunction with my decades of Nevada Bankers Association
5 efforts. I understand the purpose and underpinnings of Nevada banking
6 laws. That is really my job.

7 In the late 1990s Truckee River Bank, a California-regulated bank
8 headquartered in Truckee, California that I personally worked for acquired
9 Sierra Bank of Nevada, a Reno, Nevada-regulated Nevada bank. The
10 decision was to unify the charter into the California bank, Truckee River
11 Bank, which would have been similar to a situation where Bank of Nevada
12 was unified into an Arizona bank.

13 The decision -- at that time, as I recall, your very Board member, Dave
14 Funk, actually was managing Sierra Bank of Nevada. And I hope can attest
15 to what I am stating here. It was at first thought that Sierra Bank of Nevada
16 could form the common name for both entities on both sides of the state
17 border. That was not to be almost immediately. Both California and
18 Nevada regulators each had immediate concerns with that idea, just as
19 Commissioner Burns had the same reaction to Bank of Nevada's efforts
20 here.

21 California's then banking commissioner did not feel comfortable with a
22 domestic California bank that "of Nevada" in its name. Nevada's then
23 banking commissioner also did not feel comfortable with the California
24 bank remaining in the state with a "of Nevada" title either. For Nevada,
25 these concerns were not being made by the current commissioner, George

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1 Burns, but by his more distant predecessor. But the decisions were nearly
2 the same.

3 My bank, Truckee River Bank at the time, listened carefully to the two
4 states' concerns as to the bank name and to its corresponding federal
5 regulators and carefully searched, using outside companies, for a third
6 option bank name acceptable to all. And of course the well-known Sierra
7 West Bank was the wonderful, positive result. The name not only
8 eliminated the fear of confusion using the "of Nevada" ending, which would
9 have been caused to the public, but became a huge cross-border hit and asset
10 for that bank. In fact, so successful was that name transition that within five
11 or so years thereafter, Bank of the West made one of its first acquisitions
12 outside of California and purchased Sierra West Bank.

13 The use of the "of Nevada" designation by true Nevada banks is one of the
14 few and last remaining benefits of a Nevada-state chartered institution. For
15 Heritage Bank of Nevada, this "of Nevada" designation is our unambiguous
16 signal to our service area, that we are one of the last of the true Nevada
17 community banks. We are a silver state banking orientation and we are
18 proud to be just that. We consider Nevada our true home state, as we
19 maintain bank branches and offices only within our Nevada borders. We are
20 primarily owned by a few hundred local Nevada families. We could have
21 adopted name that made us sound big and important, but as our motto states,
22 it's not how big your bank is, it's how big you are with your bank.

23 Bigness and importance is not our first mission. Our first mission is to
24 identify with northern Nevada and serve Nevada. And our name, Heritage
25 Bank of Nevada, clearly reflects that mission. It is our asset and it keeps us

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1 focused on being a domestic Nevada bank. To allow an Arizona bank to
2 now use that same asset is just not right. That bank could locate right next
3 door to us in northern Nevada. And our customers could be confused as to
4 the local commitment and community bank nature of this Arizona bank.

5 Without parsing the legal arguments, both sides of which are very
6 impressive, we believe the commissioner's decision to protect our direct
7 interest in the use of the name "of Nevada" and its designation is, of course,
8 appreciated, but more importantly, it's what Nevada has advised all banks to
9 do for years. We've seen nothing that indicates that Commissioner Burns's
10 application of our statutes, rules and regulations constitutes anything
11 approaching an arbitrary, capricious or unreasonable interpretation or
12 conduct. And it saddens me to read what has been written before you, as the
13 portrayal is not called for and is unfair.

14 With all the commissioner's efforts to keep our banks on a stable footing, he
15 deserves deeper respect. In fact, we believe the opposite is true regarding
16 his efforts. It appears to us that this commissioner is entirely consistent with
17 other decisions of the banking division, including the very one I personally
18 participated in while at Truckee River Bank almost 20 years ago. I would
19 have been surprised if this decision was not made.

20 In conclusion, and as I wrote in an article a few years back, consistency is
21 the hallmark of public trust in banking. The push-me, pull-me of cross-
22 purpose regulation and erratic decision making creates chaos in our
23 business, simply chaos. The rules are already hard enough to follow without
24 trying to change them for individual banks and special situations engineered
25 by a bank in their own interest. We are a financial business, slow to change,

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1 because the public looks for predictability in banking. We believe the
2 consistent, reasonable and proper position here is clearly that of the
3 commissioner. The position of Bank of Nevada, while helpful to Bank of
4 Nevada, is not their only viable option and if implemented opens up all sorts
5 of areas of concern for the state of Nevada and, frankly, for its true Nevada-
6 based competitors, such as Heritage Bank of Nevada.

7 We know that someday we may expand beyond Nevada. We note that if the
8 decision of the commissioner is upheld here, that we may need to alter our
9 name regarding "of Nevada." We accept that as part of our growth, just as
10 Sierra West decades ago. If we have succeeded to that level, change is
11 inevitable. We respectfully ask that this Board protect "of Nevada"
12 designation for those banks like ours that are willing to fully commit to
13 Nevada domestic regulation and like ours is willing to domestic their
14 operations within the state and proudly call themselves true Nevada-based
15 banks. The rapid disappearance of Nevada banks requires that we apply our
16 laws, rules and regulations consistently if Nevada is to remain viable in the
17 financial services industry and not be subjected to remote regulation from
18 afar.

19 I respectfully ask that this Board carefully consider the broader interests of
20 the state over the narrow interests of any one bank, including my own bank.
21 Regulation is hard and grows harder all the time. We need strong regulation
22 of banks, but it is made doubly hard when riddled with exceptions and
23 unpredictable interpretations. Thank you. I'll take any questions. If not, I'll
24 submit my written comments.

25 Marshall: Did any of the Board members have any questions of Mr. Rabkin? Mr.

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1 Rabkin, thank you very much for...

2 Rabkin: Thank you.

3 Marshall: Thank you for coming here and providing testimony. Do you want to give
4 to me your written testimony, sir? Yes. We have copies of it?

5 Rabkin: Yes, I submitted it. Yes.

6 Marshall: Thank you. All right. I think that before we get to the Order of the day we
7 do not have the chair, the Governor, and we do not have Board member
8 Funk. And so we need to have a chair. So what do you guys want to do?

9 Wallin: I just make a move -- a motion that we nominate Kate Marshall as the chair.

10 Marshall: Is there a second?

11 Martin: And if I don't? [Laughter] I'll second the motion.

12 Marshall: I know, it's awkward. Thank you for giving me the thankless job of
13 chairing. Okay. All right. I'm now chair. Okay. Guys, so let's move on.

14 Wallin: Move to the vote.

15 Marshall: Oh, okay. Any discussion? Hearing none, all those in favor say aye.

16 Wallin: Aye.

17 Marshall: Aye.

18 Martin: Aye.

19 Marshall: Any opposed? Motion carries. All right. Moving then to Agenda Item No.
20 2, we have an appeal here of the decision of the Commissioner of Finance
21 Institutions dated February 5, 2014. I think that the way that we're going to
22 proceed is each side will have 30 minutes. The plaintiff in this appeal may
23 reserve time for rebuttal. They do that up front. We actually have two
24 hours set aside for this, but I would expect that Board members may ask you
25 questions during your argument. We will have someone timing so that we

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1 are more or less within our time range.

2 So will Western Alliance Bank then please approach, if that's okay with you.

3 Martin: Madam Treasurer?

4 Marshall: Yes.

5 Martin: Just for the record I'd like to state that I do actually have a small bank

6 account that I'm a signatory on at Bank of Nevada, although -- and I've got

7 other bank accounts other places as well, but just for the record.

8 Marshall: Thank you.

9 Male: Thank you very much, Madam Treasurer.

10 Marshall: Did you -- do we know, Richard, can the recording pick up if he's dead

11 center behind the podium; is that okay?

12 Foreman: Yes.

13 List: Let's do this.

14 Marshall: Okay. Thank you.

15 List: Yeah.

16 Marshall: Is that okay with you, Mr. Martin? I don't know if you can see.

17 Martin: Yes. That's fine. I can hear him and see.

18 Marshall: Okay. I'm sorry. Go ahead.

19 List: Thank you, Madam Treasurer and Ms. Wallin and Mr. Martin. We

20 appreciate very much the opportunity to be here today on behalf of the bank

21 and to address a couple preliminary things first, if we may. As I understand

22 it, there's a comment period at the end of the presentations. And some -- I

23 know that there are others here that want to be heard at some point. And I

24 think they anticipated following the presentation and prior to deliberations

25 or voting. Do I understand that correctly, there'll be an opportunity then?

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1 Marshall: Normally the way Agenda items proceeds is they are self-enclosed. So an
2 Agenda item will be finished before the next item comes. Which would
3 mean in this case -- but I'll ask counsel how they feel. It would mean in this
4 case that we would actually finish with Agenda Item No. 2 before we moved
5 to public comment.

6 List: They would actually be speaking to this Agenda item.

7 Marshall: Right. So, Counsel, how do -- what is your opinion?

8 Belcourt: The public comment usually is a separate item. And usually when you
9 conduct it at the beginning and the end, the hearing usually takes
10 (inaudible). Another way to conduct public comment would be to allow it
11 to be a specific item. And that's done also when you have an Agenda item
12 that has action to follow. This is a different matter than—arguably a
13 different matter—since it's an adversarial type proceeding where -- I mean,
14 as opposed to a doctrine of regulation where clearly public comment is at
15 that stage. It's within the Board's discretion, however, the concern is about
16 ...this... this adversarial nature of it. You cannot control what people say in
17 a public comment period because that's part of the law. But we -- but the
18 Board can choose --and if it's going to allow that in an adversarial
19 procedure—it's an issue for the chair and subject to concurrence by the
20 members whether to allow that. I don't know if that answered your
21 question.

22 Marshall: I don't know. I'd like to hear what other Board members think. I'm inclined
23 because this is a quasi-adjudicative place that we're in, where we're taking
24 an appeal and there indeed may be appeal of what is done here today, that
25 we should keep the record clean. That, in my mind, would mean a more

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1 narrow interpretation, where each party gets to present their argument, any
2 witnesses they might have. The leading party can then have rebuttal if they
3 reserve it up front. And that's the way we proceed.
4 But this is a matter of first impression. I don't think we've ever done this
5 before. And so if Board members feel comfortable doing it differently I'm
6 open to that.

7 Wallin: Well, I think that they should be allowed to present their witnesses.

8 Marshall: Okay.

9 Wallin: But, yeah, as part of the discussion that we have as we go.

10 List: And technically they're not actually witnesses, but they are individuals who
11 have feelings about the outcome of the case. And it makes sense, I would
12 think, that they would be able to speak after they've heard the arguments and
13 give their views.

14 Martin: Madam Chair?

15 Marshall: Yes?

16 Martin: Madam Treasurer, you're Madam Chair...

17 Marshall: Yeah.

18 Martin: I would echo what Controller Wallin said in that since these people have
19 taken the time to come here to the meeting, that if we can allot them and
20 maybe just specify a certain amount of time for their discussion or their
21 comments to allow them to do so.

22 Marshall: Yes. Can you state your name for the record, please.

23 Pope: Madam Chair, other members of the Board, David Pope with the Attorney
24 General's Office, on behalf of the Financial Institutions Division. And so
25 our position is that this proceeding is an appeal. And in an appeal you have

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1 your record. The bank has submitted affidavits and, therefore, we wouldn't
2 view it as being proper for any witnesses to be called. If people are going to
3 give public comment, then, you know, we'd ask or caution that it not be
4 deemed or considered to be testimony, but just the public comment.

5 Marshall: What do you guys think about -- thank you very much.

6 Pope: Thank you.

7 Marshall: What do you guys think about let's have the proceeding completed, so both
8 sides present. And then we'll have public comment to this particular item
9 before we rule on the item. Would that would be okay with everyone?

10 Wallin: Absolutely, mm-hum.

11 Marshall: Is that okay with you?

12 Martin: Yes.

13 Marshall: Is that okay?

14 List: Indeed. Thank you, Madam Chair.

15 Marshall: All right. Then, let's move forward. That will be...

16 List: First of all, we do have (inaudible) that this is a case of first impression. I
17 think a lot of folks never realized in the past that this Board had this kind of
18 function. I don't think there's ever been an appeal, to our knowledge,
19 historical times where there's been an appeal from a decision or a ruling
20 from the Financial Institution Division. So I realize we're sort of making
21 some new law, maybe a new procedure in the process. And we do
22 understand that it is relatively informal, but we obviously want to abide by
23 whatever standards and rules you'd like to see us abide by.

24 And we say at the outset that we wouldn't be here if this bank didn't strongly
25 feel that they're correct. And as you'll hear during the course of our

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1 presentation, this is an extremely important issue for this bank, for the
2 employees, for the customers and for the public at large in the state of
3 Nevada. This is a bank that was founded 20 years ago, back in 1994 by
4 Nevadans, for Nevadans. Some of those founders are here today. Bill Boyd
5 and Art Marshall, for example, who are among the first investors and Board
6 members, and they're still involved.

7 One of the things that Mr. Rabkin indicated earlier was that we're no longer
8 -- that the ownership has changed. Ownership hasn't changed at all. This
9 bank has the same owners on January 1st as it had on December 31st. The
10 owners are the shareholders of Western Alliance Bancorp, which is a New
11 York Stock Exchange company. Those owners remain the same today as
12 they were before. And you'll hear me several times during the course of this
13 presentation allude to the fact that nothing substantively has really changed
14 here with this transition.

15 They joined or merged with Western Alliance Bancorp in 1995, 19 years
16 ago. And it wasn't as if they were just bought out at that time. They
17 remained a Nevada-chartered bank, but they rolled their stock in and
18 became a part of Western Alliance Bancorp, these same shareholders. And
19 today, there are 13 board members of the Western Alliance Bancorp, the
20 parent company, several of whom are Nevadans. They're the same folks
21 that were involved in this bank, most of them all the way from the
22 beginning, and many certainly over the years as they joined.

23 It runs its business from Las Vegas today, just like it did in December.
24 Same officers. Mr. Guedry's here, the president of the bank. Bruce
25 Hendricks, still an officer and senior executive of the bank. The same

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1 thing's true throughout the branches. There's been no substantive change,
2 other than this technical change that they're under a different charter than
3 they were before.

4 Over the years since the bank began, some 20 years ago, it's bought several
5 smaller banks that probably would have failed in Nevada had they not come
6 along. Among those we've got Nevada First Bank, First Independent Bank
7 of Nevada, Service First Bank, Security Savings Bank. All of those were
8 bought along the way. They also brought in more directors, John Stanley is
9 the newer director. Todd Marshall, son of Art, is here, also. He was one of
10 the original founders of the bank. And he's remained on the board all these
11 years.

12 So the bank has continued to grow for these 20 years. Today, they have 11
13 retail offices, they have over 400 employees. I know in our paperwork --
14 and I hope you've all had a chance to plow through the volume of paperwork
15 that you've been deluged with -- we indicated that there were 35,000 bank
16 accounts. It's actually 40,000. So you have thousands of Nevadans,
17 thousands of Nevada businesses that are dealing with this bank. And they're
18 still the same customers, they still have their same accounts as they did back
19 in December.

20 The bank advised Commissioner Burns that they wish to continue to do
21 business under the trade name, under the brand of Bank of Nevada. So
22 understandably they wanted to keep it. The commissioner indicated he
23 wasn't going to allow it. And so we did some very careful research and
24 concluded that we were correct, that we were entitled to use it on a
25 continuing basis.

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1 They argue that it's a different bank. It's actually it's a distinction without a
2 difference. In essence, it's the same institution. Consolidation under -- they
3 actually consolidated three banks, under the Arizona charter. The Arizona
4 charter was originally for Western Alliance Bank, which operates in
5 Arizona, and they also brought in under that same charter, at the end of the
6 year, Torrey Pines Bank, California; and Bank of Nevada. California had no
7 problem with continuing to use the geographic name over there, but we
8 recognize that our commissioner did not want to see that happen. And so
9 feeling that it was somehow misleading the public to the wrong conclusion.
10 So in order to bring this appeal, we didn't just blindsided anybody. We
11 worked very carefully, coordinated the process with the Department of
12 Business and Industry, with the governor's legal counsel and others. And
13 we went about it in what we considered to be a friendly, dignified manner,
14 to get it before you. So the appeal was -- despite some of the inferences in
15 the State's brief, the fact is that it was fully understood that we were going to
16 take the appeal. We reserved the right to do that when they moved forward
17 with consolidation in December. We advised everyone involved and we
18 specifically in writing reserved the right to take the appeal. And sure
19 enough, on January 8th we filed the appeal.

20 And then the commissioner came back and said no, we're not going to let
21 you do that the following month. I could go into more detail if you have any
22 questions about how that process worked. But essentially it was
23 orchestrated in a coordinated way to posture it so that you would have the
24 opportunity today to review the correctness of the decision that was made.

25 We were given 120 days to continue to use the name Bank of Nevada during

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1 the transition period while this appeal could be heard, and during which
2 time, if we were unsuccessful, the bank would still have time to start
3 spending the enormous amounts of money to change all the signage, to
4 notify all the customers and put together the forms and that is required to
5 deal with the transition. Subsequently, the appeal took a little longer to get
6 put before you than we originally expected. And so, by agreement, we were
7 granted an additional 90 days. So we actually we have until I think the 30th
8 of June to complete the process, if we should have to change the name to
9 Western Alliance Bank.

10 So that's what brings us here today. The Financial Institution Division and
11 the FDIC, who is our insurer, approved it to go forward in this fashion. And
12 I should say that so now what they have are the three subsidiary banks,
13 owned in one entity, under the parent publicly-traded corporation. And one
14 of the first questions that you would ask is, why would we do that? Why
15 would we relinquish the Nevada charter and consolidate it in Arizona? The
16 answer is pretty simple. It's a matter of good management. They eliminated
17 a lot of complications with three different regulated states. Now we just
18 have one, Arizona, and along with the FDIC, which we had before.

19 So we still have the FDIC, which is really the big dog, along with the state
20 of Arizona that has a very thorough and comprehensive regulatory program
21 of their own. Frankly, perhaps better or certainly at least as strong as the
22 state of Nevada. So there's no lightening of regulatory oversight. There's no
23 lessening of the management of how this bank operates. They still have the
24 same kind of restraints and restrictions that are of the federal law and under
25 Arizona law, essentially as they would have had on a continuing basis under

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1 Nevada law.

2 Marshall: You know, talking about the kind of regulation that you have -- I don't know
3 if you have the statute in front of you, but if you turn to NRS 666.400.

4 List: Which one? I'm sorry.

5 Marshall: NRS 666.400.

6 List: Yes.

7 Marshall: And go to -- towards the end of that, it appears -- and I'd like your opinion
8 on this. This would be an area of law that this room is full of expertise in. It
9 appears that the commissioner may apply the laws of Nevada to your bank,
10 whether or not the bank is chartered through Nevada, in that the laws of the
11 state regarding protections of customers, fair lending, etcetera shall apply.
12 Regardless of the fact of this bank being chartered out of this state. Is that
13 correct? Is that your...

14 List: My understanding is that our commissioner here does have a certain amount
15 of continuing oversight. Among other things, he has the right to disallow
16 names that are confusingly similar other banks, for example. I think you're
17 probably looking at Subsection (4)(a), where it says, "The Commissioner,
18 by regulation, may order that Nevada law prevail over that of the home state
19 if the application of Nevada law is necessary to preserve the safe and sound
20 operation of the branch or otherwise protect the residents of this state."
21 So he does have some continuing oversight.

22 Marshall: But the next section states also, with respect to the customers, correct?

23 List: Yes.

24 Marshall: So if this commissioner felt that there was something that was being done
25 that was not in the customers' best interest, they could come out and apply

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1 the regulation to you; is that correct? Even though you're chartered under
2 the state of Arizona; is that right?

3 List: I believe that's what the statute says. And I'm sure there are instances where
4 the commissioner has done that. The -- of course national banks operate
5 here, as well. And he has some oversight with regard to the national banks,
6 too, nationally chartered banks.

7 Marshall: You also mentioned the issue of competition. I am an anti-trust lawyer by
8 trade and so...

9 List: Right.

10 Marshall: ...competition is a little more interesting. Is it correct that if you were
11 denied the use of your name, in fact, that would lessen the value of your
12 company and perhaps be a regulatory distortion on the market?

13 List: We absolutely believe the answer's yes. The value of the name is in the
14 millions of dollars. The brand is so important. It represents the integrity of
15 an institution that has worked so hard to develop the trustworthiness. Trust
16 is so much a part of any bank business because you put your money in there,
17 you want to know that it's protected. You want to know that the bank is
18 sound, that it meets the criteria under the federal requirements for footings
19 and for asset balance and ratios. And it is absolutely, that's correct, I think,
20 and we'll touch a little bit on that as we go along.

21 We feel that part of the Constitution that most of us probably never paid
22 much attention to, the so-called dormant Commerce Clause. It actually
23 came as news to many people over in B&A to hear about it, but it precludes
24 banks from -- or any institution -- of giving favorable treatment to an in-
25 state institution and prejudicing out-of-state institutions that they compete

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1 with, which touches on the same precedent with what you're talking about in
2 terms of unfair practice.

3 Marshall: But, I mean, do you think we need to reach the issue of the dormant
4 Commerce Clause, or is it more your focus of simple statutory construction?

5 List: I think it's simple statutory construction. We think that the statute itself is
6 not unconstitutional. We think it's being misinterpreted. We believe the
7 statute itself -- and we're speaking now, I think, of primarily of 657.058.
8 We feel it's been misapplied and not clearly understood as to its legislative
9 intent behind it.

10 The statute came about because of the Riegle-Neal Act of 1994, which
11 allowed interstate branching and banking. And in 1995, Scott Walshaw,
12 who was then the commissioner and actually served under three
13 administrations, Bryan, Miller and the Guinn administration. Scott is here
14 today. And he was the one who really was the architect of Nevada's law that
15 contains this section. And it was done in response to Riegle-Neal to
16 facilitate our banks in Nevada to engage in interstate banking. And as he
17 helped draft that law and pass it through the legislature, to lobby it, in fact
18 his memorandum was cited by both the state and by ourselves.

19 As he's indicated in his declaration that we've attached to our brief, there
20 was never an intent to have anything to do with the name of banks. It was
21 always intended just to distinguish Nevada-chartered banks from foreign
22 banks, from national banks, and from out-of-state banks. Each of them has
23 their own definition. And it's a shorthand term that was used, rather than
24 having to repeat the cumbersome phrase all through the statute. Banks or
25 depository institutions organized under the laws of the state of Nevada,

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1 instead they just called it Nevada banks. And there's no reference in the
2 statute or any of the legislative history to precluding the use of name Nevada
3 bank or Nevada in a name like any other institution.

4 Marshall: Well, can I ask you about some stuff that -- so we're in the area of
5 definitions, right? So if you look at the definition immediately preceding
6 that, net earnings. Would it be correct to say that the definition of net
7 earnings as defined in this statute is meant to apply to this chapter, and is not
8 necessarily the definition of net earnings that might be applied in another
9 instance, like for example, before the IRS?

10 List: Exactly. For example, another definition that's in this statute is federal
11 agency. Federal agency is "defined of being the controller of the currency."
12 Well, we know there are thousands of federal agencies. If that's the only
13 federal agency that we can ever recognize and use that term for, then there's
14 no way to justify suggesting that federal agency is -- applies for all
15 purposes. It's strictly for defining for this statute, controller of the currency,
16 they call it federal agency. Nevada-chartered banks, they call it Nevada
17 banks. Nationally-chartered banks, it says they're banks that are
18 headquartered in Nevada. Well, nationally-chartered banks are in every
19 state of the union, not just in the state of Nevada. So it would certainly be
20 inappropo to suggest that for all purposes of Nevada law or for all purposes
21 of any law, that national bank could only apply to a Nevada institution.

22 Marshall: I -- guys, Board members, I have one more question. And I don't mean to
23 hog this at all. So feel free to ask your questions. I just have one more
24 question. If we take what the financial division's definition is -- if we take
25 their definition as true, that Nevada is meant to define the name of a bank,

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1 so that when you say Nevada bank, you are actually talking about the name
2 of a bank that's chartered in the state -- if we move to NRS 666(a).260,
3 which I think you cited in one of your...

4 List: Yeah, that's the one that defines bank.

5 Marshall: Well, it defines state branch.

6 List: Yeah.

7 Marshall: So in that statute it says, "The reserve must be maintained with a Nevada
8 bank or national bank". If we take the understanding of the Financial
9 Division's definition, that it is meant to refer to the actual name of a bank,
10 how then would this statute include banks that are chartered in Nevada, but
11 do not have the name Nevada in them? For example, Meadows Bank. How
12 could that work? Would the definition have to have two meanings? How
13 could it work?

14 List: I suppose it would have to have two meanings. I mean, you have -- we
15 know of at least three banks in Nevada that are chartered here that don't use
16 the name Nevada. You've got Town and Country Bank, Bank of George,
17 Meadows Bank -- which really kind of dilutes the state's argument that the
18 name Nevada brings such tremendous value. Why didn't they put it in their
19 names? Obviously, they have their own brand or their own reason. As a
20 matter of fact, a bank that doesn't use the name Nevada, could be sold to an
21 out-of-state bank, and keep its identity, keep its brand, and continue its
22 goodwill value off into the future.

23 So under this interpretation, if the bank early on decides it wants the word
24 Nevada in there, they could never sell itself for full value because it has to
25 drop the word Nevada.

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1 Marshall: So under your understanding, in NRS 666(a)260, when it says, "The reserve
2 must be maintained with a Nevada bank," that would include a bank like
3 Meadows Bank?

4 List: Yes.

5 Marshall: So the reserve can be maintained with Meadows Bank, even though they
6 don't have the use of the word Nevada in them; is that correct?

7 List: That's correct.

8 Marshall: Or a national bank, even though it didn't have use of the word national in it;
9 is that your understanding of this statute?

10 List: My understanding of the statute, with respect to national banks, is that as
11 long as they use the word national...

12 Marshall: They don't have to.

13 List: ...they don't have to use Nevada. They can if they want to. Many of them
14 do, as was cited in our brief. I think there are a dozen or so who over the
15 years have used or continue to use -- national banks that continue to use the
16 word Nevada.

17 I would also mention that the brand is trademarked with both the federal and
18 state agencies, as an owned brand of Western Alliance Bancorp. But as a
19 practical matter, it's not -- although we own it, now we can't use it. And it
20 diminishes the value enormously of this bank, which has built up its
21 goodwill over the years around that name and around the good service that
22 its employees and the folks that have worked so hard to build it as -- it's a
23 Nevada institution. It's not just a bank. And it's -- brand names are so
24 incredibly significant and important for any business. Imagine if, for
25 example, McDonald's, because they're not headquartered in Nevada,

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1 couldn't use the name McDonald's. I mean, what's it going to be? Western
2 Alliance Hamburger Company in the State of Nevada? It would lose all of
3 their identity. Or if you, as individuals, who understand that your reputation
4 is built around your name, and were somehow required to change your name
5 all of a sudden -- it's your whole identity. It's the value that you built over
6 the years through public service and community involvement. And so it's
7 extremely important that they be able to use it. It's enormously important.

8 How am I doing on time, if I may ask?

9 Belcourt: You have about seven and a half minutes left.

10 List: Okay. Thank you. The other statute that they rely on is a little bit easier to
11 explain. That's 657.200. They suggest that by using the name Bank of
12 Nevada it's going to somehow confuse the public because the public's going
13 to be confused about who the regulator is. I'll ask you very simply, how
14 many people out of a 1,000 people have any idea what a Nevada-chartered
15 bank is, what a federally-chartered bank is, what an Arizona-chartered bank
16 is? What they're interested in is who their banker is, who the individuals
17 are. Yes?

18 Wallin: I think to kind of follow up on that, and this is where I struggle with how
19 this would be confusing by not being able to use this name because you
20 have Bank of George and the Town and Country Bank. I'm looking at those
21 as not being Nevada banks, and maybe I don't want to be with a Nevada
22 bank. That when you had the financial crisis you might want to go
23 somewhere else. So to me that's confusing, too, because we're not telling
24 people who they're, you know, where they're really from. So I don't -- so I
25 think this whole comment about confusion here is

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1 List: Well, in fact, the confusion is exactly the opposite...

2 Wallin: Mm-hum.

3 List: ...of what the state suggests. That's what you're saying. I mean, the real
4 confusion's going to happen if this bank has to change its name. You're
5 going to get thousands and thousands of customers saying what about my
6 debit card? It says Bank of Nevada, but you're no longer Bank of Nevada.
7 What about my debit card are my checks good? What about my line of
8 credit? Who am I going to see when I walk into my bank? Who am I going
9 to talk to about my line of credit with my lending officer? What's
10 happening? Who's the new owner? The answer is there's no new owner.
11 It's the same bank, but try to explain to thousands and tens of thousands of
12 customers and businesses all over the state.

13 This is a bank today that has \$9.8 billion in assets. This is a bank that --
14 with the combination -- I started to mention earlier, why did they go to
15 Arizona? Among other things they consolidated the assets of the three
16 different entities into one. So now they got enough money without having
17 to move money back and forth between the banks to do significant loans
18 right through the Bank of Nevada, right here.

19 And I might also mention that the parent bank over the years has been really
20 good to the state. They've pumped some \$300 million into Bank of Nevada
21 during -- when time were rough to make sure everything stayed strong and
22 good. They also bought about \$50 million in nonperforming loans, took
23 them off the books of Nevada. And now they've got the combined strength
24 of all three. It's a much stronger Bank of Nevada.

25 So, in any event, we think that the confusion here is not about who the

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1 regulator is. I can't imagine anybody saying, whoa, I don't know who my
2 regulator is. They're concerned about who the banker is. And so we
3 suggest that is exactly the reason that we need to push back on that statute
4 and say it doesn't give you the right to say that there's going to be confusion.
5 You're going to create confusion if you do it.

6 There's another interesting aspect. Federal bankers, there are four primary
7 federal regulatory agencies. There's the Comptroller of the Currency, there's
8 the Federal Reserve System, the FDIC that provides the insurance for
9 depositors, and then there's the Office of Thrift Supervision. All of those
10 entities came together many, many years ago and said we don't want any
11 confusion. We're going to eliminate confusion. We're going to set forth
12 four criteria that any bank that is using a brand name, other than its parent
13 name or other than its actual corporate name, have to abide by these four
14 criteria.

15 They said you have to make sure that all of your signage and the use of the
16 name would clearly indicate that the subsidiary of a member bank of another
17 name. You also have to educate your employees to make that clear to the
18 customers. That's the second thing. You have to advise new customers and
19 have them sign a piece of paper acknowledging that Bank of Nevada is a
20 subsidiary of Western Alliance Bank. And you have to train your
21 employees to answer all the questions and make clear to all of the customers
22 how that works. And that's prevailed all across America, where banks use
23 brand names in other states.

24 We cited a whole lot of those states in our brief, where they go across state
25 lines and use geographic names elsewhere. States like California still lets us

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1 use Bank of Torrey Pines. Arizona allows it. Idaho allows it. Wyoming
2 allows it. Most do. Banks all across America allow it. Illinois and Florida,
3 and I believe New York. And there's --as far as we know, there's no state
4 that's ever tried to put a limitation on a name like this. There's just no legal
5 basis to do it. Unless you try to misread the statute and come to the -- to a
6 false conclusion.

7 And by the way, we're not personally critical of the commissioner here. We
8 think that he's acted in good faith. I can see how he may have read this
9 statute to mean that. But as a practical matter, he just can't do it, because
10 the law doesn't allow it and it's improper.

11 I think, finally, I want to come back to the fact that the architect of this bill,
12 Mr. Walshaw, has made it very, very clear in his declaration attached to our
13 plea, namely that this statute never had anything in the world to do with
14 names. It's all about facilitating different kinds of activities that each of the
15 four different kinds of banks could engage in. That's all it is. The word
16 name was never mentioned anyplace in this statute. And to deprive this
17 venerable Nevada institution that has built up its goodwill over the years of
18 its very identity would be a tragedy. So we -- I'll reserve a little bit of time,
19 if I have such left. And thank you very much for your consideration.

20 Marshall: Thank you very much. Mr. Martin, did you have any questions?

21 Martin: Not at the moment, no.

22 Wallin: I'm done.

23 Marshall: Thank you very much for your presentation.

24 List: Thank you, Madam Chair.

25 Marshall: You did not reserve time for a rebuttal.

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1 List: I do have time?

2 Marshall: You did not.

3 List: All right.

4 Marshall: Okay.

5 Male: Thank you.

6 Marshall: Financial Institutions Division, did you want to come up?

7 Pope: Yes. Thank you, Madam Chair.

8 Marshall: If it's easier for you to sit at one of the -- whatever's easiest for you. Okay.

9 Pope: Yeah.

10 Marshall: Because you have papers.

11 Pope: Well, we may not these, but I brought them just in case. Thank you.

12 Madam Chair, Member Wallin and Member Martin, David Pope on behalf

13 of the Financial Institutions Division. And thank you all for this special

14 meeting. This is a very important matter to both sides and we appreciate the

15 time you've given to us.

16 There's been mention of a merger. The merger of Bank of Nevada -- we'll

17 refer to -- throughout my discussion Western Alliance Bank as Western

18 Alliance Bank, Western Alliance, perhaps WAB Bank if that's okay. So the

19 merger of the Bank of Nevada and WAB was approved pursuant to NRS

20 666.015, as being in the public interest. And Western Alliance's continued

21 use of the name Bank of Nevada was not approved because the use of that

22 name misleads and confuses the public to believe that branches of an

23 Arizona state-chartered bank are a Nevada state-chartered bank.

24 NRS 666.015(6) states that, "The Commissioner may approve the

25 application subject to any terms and conditions which the Commissioner

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1 considers necessary to protect the public interest." In this case to protect the
2 public interest, the commissioner determined it was necessary to condition
3 the approval of the merger on Western Alliances commitment to using the
4 name Western Alliance Bank of Nevada, rather than Bank of Nevada.

5 In addition, pursuant to NRS 666.015(9), when a Nevada depository
6 institution merges with an out-of-state depository institution, "shall comply
7 with the laws of all the states in which it is authorized to operate."

8 Therefore, Western Alliance must comply with both NRS 657.058 and
9 657.200, and cannot use the name Bank of Nevada, because using that name
10 is contrary to both of those statutes. These matters are fairly straight
11 forward to the Division. Western Alliance is confusing things by
12 eliminating the meaning and application of NRS 657.058 and 657.200,
13 which were established to protect the public interest.

14 In essence, the Division feels that the bank is challenging the statutory
15 authority and responsibility of the Division and it's commissioner to protect
16 Nevada consumers from a misleading and confusing bank names and anti-
17 competitive activity. So this is an appeal of an agency decision. And as
18 such is presumed correct. And I cite to you United States v. State Engineer,
19 which is found at *117 Nevada 585*.

20 You could also look to the NRS 233B.135 which says that an agency
21 decision is valid until shown otherwise. That being said, Western Alliance
22 as the appellant, has the burden to show that the commissioner's Order is
23 incorrect and that use of the name Bank of Nevada is not misleading or
24 confusing. We believe that Western Alliance cannot meet that burden, and
25 that, therefore, they've resorted to alleging that there's a lack -- or that the

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1 Order is not supported by substantial evidence. They in our opinion confuse
2 this a little bit and say that it's the division's burden of proof to show that the
3 Order is supported by substantial evidence.

4 Case law explains that the burden there is on Western Alliance to show that
5 the Order was not supported by substantial evidence. A little different, but
6 the burden is actually on the appellant. As the Division argued in its brief,
7 the only evidence in the end to support the conclusions and the Order, with
8 regard to the bank not being in compliance with NRS 657.058 and 657.200,
9 is the evidence that the bank is organizing under the laws of another state
10 and that it's using an unauthorized name here in Nevada. There is no
11 dispute the the Division has submitted -- or provided substantial evidence in
12 this regard.

13 The main issue then in this case is the statutory interpretation of NRS
14 657.058 and 657.200. The language in each of those statutes is plain and
15 unambiguous. Therefore, the language of those statutes has to be given its
16 plain meaning and we can't look to legislative history, look for some other
17 meaning.

18 NRS 657.058 is definitional and it states that a bank organized under the
19 laws of Nevada is a bank that can use the word Nevada in its name. In the
20 application of the bank organized pursuant to the laws of another state
21 cannot use the word Nevada in its name. The statute also says that national
22 banks having their home base in Nevada can use the word Nevada in their
23 names.

24 So Western Alliance's list of national banks that have used the word Nevada
25 in their names really doesn't show anything other than that statute says what

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1 it says.

2 Marshall: Can I interrupt you for a moment there?

3 Pope: Yes.

4 Marshall: Because -- so you're referencing -- so I think we're talking about two things

5 here, right? We're talking about the section in the statute which says

6 Nevada defined. And then we're talking about the section in the statute that

7 deals with whether something's misleading or confusing; is that correct? So

8 can we separate those out for a moment?

9 Pope: Correct.

10 Marshall: Okay. So if we're going to talk about the section in the statute that's Nevada

11 defined, you kind of rushed over a little bit there. And I wanted to slow you

12 down. You read the definition and then you added by implication, you said,

13 right? By implication it means this.

14 Pope: No, I didn't say by implication.

15 Marshall: Well, you said that it means that if they -- that they -- if they have a Nevada

16 name -- or they don't have a Nevada name.

17 Pope: By application...

18 Marshall: Well...

19 Pope: ...which is in line with what the bank is saying, that the statutes are not

20 discriminatory, that the interpretation is.

21 Marshall: Well, let's go to your brief. Because in your brief you seek to support that

22 argument. And you cite to federal law and how they support it in use of the

23 word national; is that correct?

24 Pope: Yes.

25 Marshall: Okay. And so you cite to *18 USC 709*. But if we go -- I don't know if you

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1 have a copy. Do you have a copy?

2 Pope: I don't believe I have a copy.

3 Marshall: Okay. Well, if we go to *18 USC, Section 709*, it is not a definition. It is a
4 statute -- a code section that is entitled false advertising or misuse of names
5 to indicate federal agency. And it specifically begins -- the statute begins by
6 saying, "whoever" -- I'm sorry, the code begins by saying, "whoever, except
7 as permitted by the laws of the United States, uses the words national as part
8 of the business or firm name."

9 So it's very explicit in that they are saying that if you use the name -- the
10 word national in your business name -- and its entitled misuse of names.
11 Now, that seems to me to be a very large difference from a definition at the
12 beginning of a chapter, which for at least the other definitions in the chapter
13 are meant to define how the term is used in the chapter. And for which you
14 are taking this one in particular and saying that -- I don't know if you're
15 saying that it's supposed to be used to define how it's used in the chapter, but
16 you were saying that it's going to be used to define what exists out in the
17 commercial world.

18 Pope: Both.

19 Marshall: Both. So let me ask you first, if that's what was meant, why didn't the
20 legislature do this, because this definition does not explicitly state, like the
21 code that you cite in support use of the word national as part of the business
22 name when engaged in banking, and title it misuse of names. That's not
23 what we're doing here. That's what you say we're doing here, but it's not at
24 all explicit, like the federal law you cite.

25 Pope: It may not be as explicit. We believe that the plain language of our statute is

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1 trying to accomplish the same thing as that statute.

2 Marshall: Well, let me go and ask you -- did you? I'm sorry.

3 Wallin: Can I...

4 Marshall: Yeah, go ahead.

5 Wallin: All right. This -- I'm not an attorney. All right. So if this is a simple statute

6 I do not see in here, in this statute 657.058, where it says that only Nevada-

7 chartered banks can use the name Nevada. It doesn't say it in here. I see no

8 -- it just says "Nevada defined. Nevada when used to modify the word bank

9 or the term depository institution means organized under the laws of this

10 State; and the term national bank means having its headquarters within this

11 State." I don't see where it says that. If it's simple, why didn't it just say...

12 Pope: We believe this...

13 Wallin: ...only banks chartered in Nevada can use the term Nevada. Why doesn't it

14 say that?

15 Pope: Legislature uses the words that it uses...

16 Wallin: And so you're interpreting it. And then...

17 Pope: Well, by application, yes, because if a Nevada bank is one that's organized

18 under the laws here, chartered here, has a corporation here, then in

19 application a bank that is not chartered here and doesn't have a Nevada LLC

20 or corporation is...

21 Wallin: And on that same...

22 Pope: ...not Nevada.

23 Wallin: On that same thought, because you don't want to confuse the people here in

24 Nevada. Right?

25 Pope: Yes.

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1 Wallin: Then why don't you require banks that are chartered under the state of
2 Nevada to put Nevada in their name?
3 Pope: That's a good question.
4 Wallin: Because you're confusing them, right?
5 Pope: Oh, no.
6 Wallin: So you can't have one and not the other. Right?
7 Pope: Maybe that'll come about.
8 Marshall: Well, but -- and following up on that, the fact that you're not requiring it
9 suggests that the definition is permissive; is that correct?
10 Pope: Um...
11 Marshall: It's not requiring it, it is permitting you to do so if you choose.
12 Pope: I would agree that the statute allows the banks to choose whether they want
13 to use them. The Nevada charter banks can choose whether they want to use
14 the word Nevada in their name.
15 Marshall: Okay. Show me in the definition where it allows someone to choose that
16 name. Statutes are very specific. You're a lawyer. I'm a lawyer. When
17 we're talking about statutory construction, when you are permitting
18 something or requiring something, statutes get very, very specific. Right?
19 Pope: Well...
20 Marshall: They use may, they use shall, they put commas in, they put periods in. We
21 spend at least, you know, we spend at least our first of law school studying
22 this. Right? So statutes get very, very particular on this.
23 Pope: Some do.
24 Marshall: Show me where the definition is to allow...
25 Pope: Bank names are subject to approval by the commissioner.

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1 Marshall: That's not what I asked you.

2 Pope: Well, so when you read the statutes as a whole, I don't think that they could
3 get very specific in the statute, because it's going to be subject to approval
4 by the commissioner.

5 Marshall: Go ahead. I'm sorry.

6 Pope: Thank you. So we were -- I was mentioning the list of national banks
7 included in Western Alliance's brief. And just -- I discussed that national
8 banks require that national or N.A. be included in their name. And I just
9 wanted to point out that not all the names in that list, include national or
10 N.A., though they should. It's not included in the brief, to the extent that
11 that would give somebody a misimpression. I just wanted to point it out.

12 NRS 657.200 prohibits the use of a name that is identical or similar to the
13 name used by another bank. And it also prohibits the use of a name that is
14 misleading or confusing. Now, those are two -- in our view, those are
15 separated by an or. You have identical and misleading, means identical or
16 similar. And misleading -- it says, "or misleading or confusing." Because
17 they're segregated, you have two categories. And so there's a statutory
18 construction principal that says that you can't render any language negatory
19 or meaningless.

20 And so there are two different ways then that you have a name that doesn't
21 comply with the statute. In this case, Western Alliance is using the name
22 Bank of Nevada, which was the name used by another bank that no longer
23 exists. You -- part of the argument right before me was that it's the same
24 bank. It's the same people. It's not the same bank. The charter's gone. The
25 corporation's gone. The charter was surrendered. There's no longer a Bank

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1 of Nevada. So in the short term, anybody who sees that name who maybe
2 doesn't ask a question, is going to be exposed to that misperception of it's
3 the same bank. And then when they're being told it's really the same bank, I
4 mean, in fact, in the briefing, I believe, that Western Alliance indicated that.
5 They're indicating that. It's really the same bank, it's the same people, it's
6 the same employees, it's the same managers, but it's not the same bank. The
7 bank is gone.

8 Marshall: Well, can I ask you about that? Because in your brief on Page 12, you cite a
9 couple of cases. We'll start with those cases. So you cite *Detroit Savings*
10 *Bank*, which is a 1918 case out of Michigan. Now, because the other board
11 members aren't lawyers -- it's correct, right, that there's no precedential
12 value to that; is that right? It is not a 9th Circuit case.

13 Pope: Well, that's correct.

14 Marshall: Okay. And in the next case that you cite, *National Bank in North Kansas*
15 *City*, that also has no precedential value to Nevada; is that correct?

16 Pope: That's correct, Madam Chair.

17 Marshall: But let's go -- so let's start with the first one, though, because you cite the
18 first case *Detroit Savings Bank*, to say that a decision regarding a business
19 name infringement issue, stating that it's a general rule that when they're
20 properly descriptive, blah, blah, blah. So what you're saying is that you
21 geographical modifiers have to be accurate and not misleading. And you're
22 kind of moving towards this issue of whether there's -- whether the customer
23 might be misled by the name; is that right?

24 Pope: These cases were included just to show that there's a concern for these,
25 yeah, geographically accurate names. These cases were actually trademark

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1 infringement cases. So they're a little bit different, but it's just to show that
2 there is this importance. And in these cases it was recognized that the real
3 concern is to protect consumers from the initial misinterpretation, not from
4 subsequent, you know, clarification. It's are they going to initially
5 misinterpret this and get sucked in, bad use of words, but misinterpret it,
6 think that they're going someplace where they're not. And then when they
7 get there, discover that they're somewhere where they didn't intend to be.

8 Marshall: But, you know, both of these cases actually involve banks, you know,
9 trading names between two banks, right? And one is Detroit Savings Bank.
10 And the one -- the other one is Bank of Detroit. And in the second case it's
11 National Bank of North Kansas City v. Bank of North Kansas City. But
12 what the court rules in both of these cases, even though they don't have
13 precedential value -- but you cited them. What the court rules in both of
14 these cases is that those names are not misleading. Even though they sound
15 -- they sound very, very similar to you, those names are not misleading at
16 all.

17 And in fact, in the Detroit case the court says, "Because it has a right to
18 presume people will use ordinary care to prevent confusion." And in the
19 second case it says, "It is not sufficient that some person might possibly be
20 misled, but the similarity much be such that any person with such reasonable
21 care and observation, as the public generally are capable of using, and may
22 be expected to exercise, would mistake the one for the other."

23 In both cases the judges ruled the names may hold. It may continue to use
24 these names because even though people were misled, supposedly -- even
25 though the postman went to the wrong place, the fact of the matter is is that

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1 they expect the customer to use reasonable care. And I think you've
2 acknowledged that Western Alliance Bank will put in their -- all their
3 documents that they are a subsidiary of Western Alliance Bank; is that
4 correct?

5 Pope: Two points, please, Madam Chair. One, I'll address the last one first, I
6 guess, is that I believe the bank has represented that they're going to indicate
7 that Western Alliance Bank has been -- or I mean that Bank of Nevada is a
8 division of Western Alliance Bank. That's it. Not that it's not chartered
9 here.

10 To address your first point is that these were trademark infringement cases,
11 so they're deciding is there infringement, is there enough harm here to
12 compensate one of the banks. And so I would submit that if you have two
13 bank names that are somewhat similar, you know, there's cause for those
14 consumers to ask a question. In this case, if you just have one Bank of
15 Nevada and it doesn't in any way indicate that it's not a Nevada state-
16 chartered bank, what's your indication to ask a question? In fact, you're
17 being told it's the same bank.

18 So the cases are a little different.

19 Marshall: My concern is that you cited them. And the court ruled that a customer can
20 be expected to exercise reasonable care. And you realize that.

21 Pope: Okay. Just for the point stated, though, Madam Chair. Thank you. All
22 right. Then -- so in the case in the use of -- I was saying that the bank --
23 Western Alliance's use of the name Bank of Nevada violates the first part of
24 657.200, because it just prohibits the use of identical or similar names. And
25 in this case -- and it uses a language that was used by -- that's used by

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1 another bank. And so here Bank of Nevada actually was a different bank
2 that used that name. And only recently did it disappear. Now, that name is
3 going to be used by a completely different bank that's not chartered in the
4 state of Nevada. And that violates the plain languages 657.200. The people
5 are going to believe that they're still doing business with the same good old
6 Bank of Nevada.

7 With regard -- then coming back to NRS 657.200, it also prohibits the use of
8 misleading and confusing names because the statute prohibits the use of
9 misleading and confusing names that I've already discussed, but there's --
10 that's a separate category. So the use of the name Bank of Nevada is
11 misleading because the statutes clearly indicate in our opinion that a non-
12 Nevada state-chartered bank cannot use the name Nevada --or use the word
13 Nevada in its name. So therefore it's misleading and it's confusing because
14 it misleads.

15 Western Alliance has alleged that eleven or twelve other states that allow an
16 out-of-state bank to use the name of the host state in their name. There's,
17 you know, there was no proof behind that to say that, to show where the
18 charters came from. It was just a list of the names, but even if this is
19 factually accurate, what about the other 38 states? You know, he didn't
20 mention that. Are we left to believe that the other 38 states don't allow it?
21 You know, we can -- we had a couple of examples of geographically correct
22 names of Bank of Guam, the Bank of Washington, Bank of Hawaii, Bank of
23 Utah and the First Utah Bank, but, you know, what other states allow or
24 don't allow isn't relevant to the plain meaning of the Nevada statute.

25 That -- the languages on there of 657.058 and 657.200 is plain,

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1 unambiguous. And therefore we can't go beyond that plain meaning, neither
2 can we go beyond the legislative history.

3 Martin: Can I ask a point...

4 Pope: Yes.

5 Martin: ...at this point? A quick question for you. You, before, for instance, you
6 weren't going to discuss the legislative history, but if you go back and look
7 at the legislative history for 657.058 and if you look at the follow-up
8 discussions that are on that particular references, you see the fact that
9 Nevada is used in conjunction with a generic use of Nevada to describe, as
10 was stated earlier, to describe the type of bank, not a specific name. So if
11 you could comment on that. I looked up a couple of them and they
12 specifically talk about Nevada banks and how they operate and they were
13 using it as a generic term.

14 The same thing, what they said, the Nevada depository. It was just a generic
15 term and not a specific authorization or declaration that they have to -- if
16 they use the word Nevada in conjunction with the bank that they have to be
17 chartered Nevada bank.

18 Pope: Well, yes, sir. The, you know, the legislative history is somewhat silent on
19 this statute. And the -- there's definitely nothing in the legislative history
20 that's contrary to the Division's position on this statute. The plain language
21 is to be enforced unless it can be shown that it is clearly contrary to the
22 intent of the legislature. And there's nothing in the existing legislative
23 records to show that the Division's interpretation is clearly contrary to the
24 legislature's intent. So we rely on the plain language of the statute and that's
25 the reason why.

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1 So that raises...

2 Martin: Let me ask you a question from this standpoint then. If -- and I can see why
3 a lot of the banks do not use the word Nevada in their charter, even if they're
4 a state charter because how much confusion do you see or at least that I have
5 seen with the names Bank of Nevada and Nevada State Bank? People get
6 confused all the time by those two.

7 Pope: Member Martin, I guess, you know, I'm not aware of the confusion. Could
8 you please rephrase your question?

9 Martin: Okay. All I'm saying is that if the charters have -- or if they're going to use
10 the word Nevada and if all the chartered banks that are Nevada banks do, it
11 would really be more confusing than what it is right now because you do
12 have the confusion -- whether you realize it or not -- I've seen it numerous
13 times, i.e. with this Board, where the discussion of Nevada State Bank and
14 Bank of Nevada are frequently comingled because people get confused on
15 which one's which.

16 Pope: Well, thank you for that point. I mean, that's one of the considerations in a
17 trademark infringement case. And it could be considered here today if
18 there's -- here's someone who's saying that there's confusion between the
19 two names, that maybe that's a reason to not allow the Bank of Nevada
20 name to be used.

21 Martin: Then why wasn't there -- why weren't the two of them -- when they were
22 both formed, why didn't the agency say that you can't use the name Bank of
23 Nevada or Nevada State Bank?

24 Pope: The best answer I could give you to that question is that I don't know. I
25 haven't, you know, I didn't see the application. I wasn't a part of the process.

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1 I don't think there was a challenge to it. So...

2 Martin: Thank you.

3 Pope: You're welcome.

4 Martin: Go ahead.

5 Pope: Getting to the affidavits of Mr. -- or the affidavit of Mr. Walshaw, and it
6 was stated in the bank's brief that the Division agrees that Mr. Walshaw
7 could indicate what the legislature intended. The Division doesn't agree
8 with that, and neither does the Nevada Supreme Court. In fact, the affidavit
9 of Mr. Walshaw's personal opinion of the legislature's intent and
10 embellishment of the legislative record 20 years later is irrelevant and can't
11 be used.

12 In the case United States v. State Engineer, which is at *117 Nevada 585*.
13 The Nevada Supreme Court said, "Legislative statements can be considered
14 in statute when they are a reiteration of events leading to the adoption of the
15 statute, rather than an expression of personal opinion." Here the affidavit is
16 more -- it's more than a reiteration of the events that led up to the adoption
17 of the statute. It's more like personal opinion of a legislator.

18 There's another case A-NLV Cab Company v. Taxicab Authority, which is
19 found at *108 Nevada 92*, the pin set is 95. There, the Nevada Supreme
20 Court expanded on that by adopting the following, "In construing a statute
21 we do not consider the motives or understandings of individual legislators
22 who cast their votes in favor of it. Nor do we carve an exception to this
23 principle simply because the legislator whose motives are proffered actually
24 authored the bill in controversy; no guarantee can issue that those who
25 supported his proposal shared in his view of its compass."

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1 The court then went on to more or less repeat what it said in the prior case,
2 which is a legislature's statement is entitled to consideration, however when
3 it is a reiteration of legislative discussion and events leading to adoption or
4 proposed amendments, rather than merely an expression of personal
5 opinion. So the Division submits that Mr. Walshaw's affidavit must be
6 given the same treatment as a legislator's personal opinion would be given.
7 And it shouldn't be considered. Should the Board resort to the legislative
8 history and should not consider anything beyond the -- excuse me, the
9 reported record of the legislative history.

10 Now, getting to the federal guidelines that were mentioned earlier, those
11 federal guidelines deal specifically with the Federal Deposit Insurance
12 Corporation's concerns for deposit insurance limitations. And the specific
13 concern there is that a consumer might think that a bank operating under a
14 trade name is a bank different than its parent bank. You put money in both
15 banks and receive deposit limits. That's all that guidance deals with. It
16 doesn't deal with the commissioner's concerns with regard to protecting the
17 Nevada consumer from misleading bank names.

18 Marshall: You're referring to your attachment E and F or -- E and F, is that what you're
19 referring to?

20 Pope: That's correct. Western Alliance is arguing in their brief regarding common
21 sense. Unlike the case law cited by Western Alliance Division's decision is
22 not based on common sense, so it couldn't be achieved through common
23 sense. It's based on plain language of the statutes, substantial evidence that
24 Western Alliance is not organized under the laws of the state of Nevada and
25 is using an unauthorized name. Western Alliance took issue with the

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1 Order's determination that a use of the name Bank of Nevada violates NRS
2 666.015.

3 Belcourt: One minute.

4 Pope: One minute? Do I get any additional time?

5 Marshall: Why don't you finish your argument? Go ahead.

6 Pope: Thank you, Madam Chair. You know, they -- Western Alliance alleges that
7 there's no evidence supporting these determination. If the Board agrees with
8 the Division's interpretation of NRS 657.058 and 657.200, then further
9 discussion on this part of the Order is really not necessary. If, however -- or
10 I should say, nonetheless, to explain this Western Alliance's use of the name
11 lessens competition because according to NRS 657.058, bank names are
12 indicative of one of three types of banks, first, national banks, which must
13 indicate that they are a national bank.

14 Nevada state-chartered banks, whose names can include the word Nevada.
15 And third, non-Nevada state-chartered banks, the names of which cannot
16 include the word Nevada. A customer sees bank name indicating it's a
17 national bank. They know what it is and they know to look elsewhere if
18 they're really looking for a Nevada state-chartered bank. Similarly, if a
19 consumer sees a bank name including the word Nevada, with no indication
20 that it's a national bank, the consumer has good reason to believe it's a
21 Nevada state-charter bank, with regard to non-Nevada state-charter bank. It
22 can benefit when the consumer thinks they were choosing a Nevada state-
23 charter bank, rather than a misidentified Nevada state-charter bank over a
24 national bank because the name includes the word Nevada and it doesn't
25 indicate that it's not a national bank. This consumer will misidentify the

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1 bank because there's no indication that it's a non-Nevada state-chartered
2 bank. In effect, this dilutes the competitiveness of the actual Nevada state-
3 chartered banks by taking some of their market share, when the banks
4 shouldn't have the ability to do so.

5 This is, you know, the Division sees this as being no different than in-state
6 slogans Nevada Bank or By Nevada, they're supposed to mean what they
7 say. And what does it really mean if the bank is not chartered in Nevada,
8 but it says it's a Nevada bank?

9 You know, with regard to the dormant Commerce Clause, I can run through
10 that pretty quick and brief it.

11 Marshall: I think you've kind of run out of your time. I guess I was saying to finish
12 the argument.

13 Pope: Just finish that?

14 Marshall: If that's okay. But we needn't really get into the dormant Commerce
15 Clause.

16 Pope: Okay.

17 Marshall: Just something -- go ahead.

18 Pope: Then just quickly let me say -- okay. So, you know, with regard to that
19 there are two ways to show violation of dormant Commerce Clause. One is
20 that the statutes are officially discriminatory. Here they're not. The
21 language does not officially discriminate. And the bank has stated that the
22 statutes are not discriminatory and that they -- they're discriminatory in
23 application only.

24 Marshall: We read your brief.

25 Pope: Okay. So just so that we did the right thing. So you would like me to

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1 conclude, there?

2 Marshall: If that's okay.

3 Pope: Or can I give a conclusion?

4 Marshall: Well...

5 Pope: I did have a couple of additional things...

6 Marshall: ...fifteen seconds then. Wrap it up.

7 Pope: Wrap it up. Okay. I'll just -- with regard to taking, I'd like to cite the case of

8 Phillip Morris Inc., 312 (inaudible) 24. And there's a three-part test in there

9 that hasn't been met. So we, for the reasons stated, the statutes are not

10 discriminatory. The Division's interpretation of 657.058 and 657.200 are

11 based on plain language. And that is what should be enforced. The division

12 and its commissioner are statutory obligated to enforce the banking statutes

13 with a concern for the public interest and such enforcement is in exercise of

14 its police powers, upholding the commissioner's word denying WAB the use

15 of the name Bank of Nevada, is in the public interest. And the Division

16 respectfully request that it be upheld. Thank you.

17 Marshall: Thank you very much. So we -- I think both sides now have made their

18 argument. They did not reserve any rebuttal time, so you don't have rebuttal

19 time. So is it okay with the other Board members we will close this part

20 with a couple of comments to this argument? Is that all right?

21 Wallin: That's fine.

22 Marshall: Okay.

23 Martin: Yes, that's fine.

24 Marshall: Okay. Public comment. And just come to the table here and state your

25 name for the record. Do we want to limit public comments to five minutes

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1 per person or what?

2 Wallin: (Inaudible).

3 Marshall: How many people are interested in commenting publicly? Hi, guys.

4 Boyd: Everybody down here.

5 Marshall: Okay. One, two, three, four, five, six. What do you guys want to do?

6 Belcourt: It's your call. I think the initial presenter gave a long public comment. So

7 I'd say, given that we have this many presenters, it's your call.

8 Wallin: I need to leave at 3:00.

9 Marshall: Okay. So, guys, let -- we have one Board member who needs to leave at

10 3:00. Can you hear me in Vegas?

11 Martin: Yes, we can.

12 Marshall: We have one Board member who...

13 Martin: And, by the way, there's no public comment down here.

14 Marshall: Okay. We have one Board member who needs to leave at 3:00 and we do

15 need to deliberate. Okay. So we can give you a maximum of -- do the

16 Board members feel comfortable with five minutes? I realize that that's

17 shorter than what the first gentleman got, but if you run us out of time you

18 run out of luck, too. We won't get to decide.

19 Boyd: That's more than enough.

20 Marshall: Okay? Or -- okay? Martin -- Mr. Martin, is that okay?

21 Martin: Yes, that's fine.

22 Marshall: Okay. All right. Go ahead.

23 Boyd: Thank you. Good afternoon, members of Board of Finance. My name is

24 Bill Boyd. I've lived in Las Vegas since 1941, when we had one grammar

25 school and one high school, and only 15,000 residents in our whole valley. I

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1 went to college at the University of Nevada in Reno. And I'm presently
2 executive chairman of Boyd Gaming Corporation. I served on the Board of
3 Nevada State Bank for 20 years, until it was sold to Zions Bancorporation.
4 My dad and I were both major stockholders in that bank.
5 After my five-year non-compete expired, I became a large stockholder in
6 Nevada Community Bank, where my daughter Mary Ann Boyd Johnson
7 served on the board. After its sale to Zions Bancorporation, I decided to
8 start a new community bank in Las Vegas. The first person who I talked to
9 was Don Snyder, who I knew when he was chief executive officer at First
10 Interstate Bank of Nevada.
11 Then I approached Art Marshall to be our chairman. We opened the bank in
12 1994 as Bank West of Nevada. Then in 2002 other stock holders joined our
13 bank and we opened a bank in Arizona and California. And the parent
14 became known as Western Alliance Bancorporation. In 2006, Bank West of
15 Nevada merged with another local bank named Bank of Nevada. Now, I
16 didn't object to that name change because it still had the word Nevada in it.
17 So every bank I had been associated with has had the word Nevada in its
18 title. And as you heard, we presently have 13 directors that are directors of
19 our parent. And seven of those directors are Nevadans. Besides me, Don
20 Snyder, Todd Marshall, Mary Ann Boyd Johnson, Dr. Jim Nave, Dr. Nafees
21 Nagy and John Sande are all board members. Four of those seven are with
22 me here today, as well Art Marshall, who retired as our bank's chairman in
23 2009, but continues as a shareholder and is a very large supporter of the
24 bank.
25 So as a longtime Nevadan it is very important to me personally to be able to

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1 retain the name Bank of Nevada. But even more important than my feelings
2 are the many Bank of Nevada customers who'll be confused as to how this
3 will affect -- this name change would affect their everyday banking. And
4 talking about confusion, I -- also I'm sure that some of our 35,000 customers
5 might be concerned that there has been a sale or another transaction, when
6 in fact there's been no change in ownership or no change in management.
7 Thank you.

8 Marshall: Thank you very much. Do any Board members have questions of Mr.
9 Boyd? Thank you, sir.

10 Martin: No.

11 Boyd: Thank you.

12 Marshall: Good afternoon.

13 Nave: Good afternoon. Madam Chair, Ms. Wallin, Mr. Martin, my name is Dr.
14 Jim Nave. I'm a practicing veterinarian in Las Vegas, Nevada. I thank you
15 for allowing me to speak here today.

16 When I moved here to Nevada I was fortunate in the fact that I met the folks
17 with Valley Bank of Nevada. Wonderful bank. And they helped me grow
18 my business and allowed me to do what I wanted to do most, which was
19 take care of the pets of the people of southern Nevada. And I remember
20 very well when that bank was sold and the difficulty that I had because the
21 bank did change.

22 Shortly after that, Bill Boyd, Don Snyder and Todd Marshall and others
23 asked me to join with them to start Bank West of Nevada. I remember at the
24 first board meeting we were asked, "What do we want?" And I remember
25 Dr. Nafees Nagy and I said, we want another bank, not Valley Bank of

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1 Nevada. We want a bank that cares about relationships and wants to help
2 people get started, like me, that is there for the long haul, that will be
3 successful so we can help people. And Bank West became that. A bank
4 that we became extremely proud of and we still are today.

5 Bank West of Nevada and Bank of Nevada have served southern Nevada
6 through the best of times and they helped many, many people get started,
7 just as I was helped. And likewise, we still served the community in the
8 worst of times. And we did survive the worst of what any of us had
9 experienced in our lifetime. And we still helped people save their
10 businesses, keep their business if they wanted to, and survive these dark
11 times, you know.

12 I remember when Valley Bank -- I read in the paper it had changed. I
13 remember immediately I had concerns. I was worried, what that was going
14 to do to my business. I think that we all know when a company changes a
15 name or is sold, the first thing everybody is told is there'll be no change.
16 But we all know that there is, and that's what happened with me.

17 And what my big concern is, is that if we change this name, all these
18 wonderful people that we have had such relationships with and did so much
19 good, both for us and for them over the last 20 years, will have that same
20 concern. I know when Valley Bank sold I immediately changed the way I
21 did business to see how things would go. I think people will do the same
22 thing. I think it will cause people to really think and be cautious to see if
23 there's a change. We are still the same bank. We've got the same
24 management team. We've got the same directors, we do the same business
25 as we did to make the Bank West and Bank of Nevada what it was.

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1 I just think that this is -- will cause a lot of pain that's unnecessary. A lot
2 concern that's unnecessary to a lot of real good people. You know, the fact
3 that the bank has been very successful is very important to me. But what is
4 even more important to me is when I talk to somebody and they tell me how
5 that they have gotten from our bank what I got from Valley Bank. I had
6 lunch about 10 days ago with somebody that told me the same thing. Said I
7 am -- I love Bank of Nevada -- they've allowed me and my family to get
8 where we are today.

9 I hear that all the time when we're in the community. And certainly, again,
10 I'm happy that we've been financially successful and that we didn't go broke,
11 but what gives me great pleasure is that, just as what give me great pleasure
12 in my personal business, is when somebody tells me how that one of my
13 hospitals or one of my doctors or myself made their life better because of
14 the way they treated their pet. I feel that same way about this bank. I just
15 think changing the name is unnecessary and will cause a lot of pain and
16 suffering. Thank you very much.

17 Marshall: Thank you. Any questions for Dr. Nave?

18 Martin: None from down here.

19 Marshall: Thank you very much, Dr. Nave. Appreciate it. Public comment?

20 Sande: Thank you very much. For the record, John Sande III. My son's a IV, so I
21 always say that. And I have been involved in lobbying for the banking
22 industry and Nevada Bankers Association for 35 years. I was involved in
23 the bill that we made reference to, the so-called definition saying Nevada --
24 you have to have Nevada in the name for it -- organized under the laws of
25 the state of Nevada.

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1 When we started interstate banking, that was back in the mid '80s. And at
2 that time Congress said that you could go and have interstate banking if you
3 opted in at that time. And we had a huge fight at the legislature when
4 Citibank and Zions and some of the other ones came in. And, matter of fact,
5 I think we had 11 reprints of the bill before we finally made a deal and
6 basically say you couldn't start it for three and half years.

7 Then we have the Riegle-Neal bill at the federal level. And that's why we
8 came back in 1995. Now, the idea of saying a bank -- having the main bank,
9 you would have to be a state charter. In my whole career that never came
10 up. Never heard that once. And this bill right here, what they were talking
11 about in this bill, it says, "Nevada, when used to modify the word bank or
12 the term depository institutions means organized under the laws of the state
13 of Nevada." That's not saying you have to have Nevada in your name, or if
14 you have Nevada in your name, you are organized under the laws of the
15 state of Nevada.

16 It's just saying for the purpose of this statute, that's what it means. And the
17 reason we were fighting for the statute was -- and if you look in -- later on in
18 the statute -- Section 59 of the bill -- it basically was because my clients, the
19 banks wanted to make sure that if these big banks came into the state of
20 Nevada, that they couldn't come in Clark or Washoe County and make an
21 acquisition or do a de novo branch, unless they acquire a bank that had been
22 here for five years. And it had to be a Nevada-chartered bank.

23 So if you look at Section 5, it basically says, "Except as otherwise provided
24 in the section, an out-of-state depository institution without a branch in
25 Nevada or an out-of-state holding company without a depository institution

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1 in Nevada may acquire a Nevada depository institution and convert the
2 institution to a branch of the out-of-state depository institution or depository
3 institution of the out-of-state holding company. If the Nevada depository
4 institution is chartered after September 28, 1995, the Nevada depository
5 institution may be so acquired only if it has been in existence for at least five
6 years."

7 And what that was trying to do was protect the banks in Nevada that were
8 worried that these big banks would just come in and open up their own
9 offices. That was the whole purpose for these arguments and the whole
10 purpose for putting this in here. For example, if you had to have the name
11 Nevada or you weren't a Nevada depository institution -- we have a lot
12 banks, Centennial, American Bank of Congress, Security Bank, Carson
13 Valley Bank, they didn't have Nevada in them. Does that mean that they
14 weren't a financial institution that could be acquired, if they had been here
15 for five years? Absolutely not.

16 So this never came up the whole time. I agree with Scott Walshaw. There's
17 some reference to legislators making decisions and then you can't talk about
18 that. Well, he's not a legislator. He was the head of the Commission of
19 Financial Institutions. We worked very closely for years. And we never
20 had a problem. And the idea of Nevada being in a bank never once came up
21 in my whole career. Thank you.

22 Marshall: Any questions for Mr. Sande? Thank you, Mr. Sande.

23 Art Marshall: I was a lot younger when we started. In the 12 years I was on the Gaming
24 Commission it was more fun sitting there than sitting here. I can tell you
25 that.

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1 Marshall: I'm not sure that's the case today.

2 Wallin: Yes.

3 Art Marshall: I'm not going to talk about the legal side of this because there's been plenty
4 to talk about that. I'm going to talk about the fact that we're the American
5 dream. We started out with \$8 million raised on a lot of people, big and
6 small contributions. Today we're a \$9.5 billion company. And have gone
7 through difficult times that everybody's well aware of. We saved the bank.
8 Now, there's a little bit of a misunderstanding about how things started.
9 Western Alliance Bancorporation was originally Bank of Nevada. In other
10 words, that was the holding company. But because we were moving into
11 other states, we decided we had to change the name from Bank of Nevada to
12 holding company to Western Alliance. So Western Alliance is not a new
13 thing. It was a name change.

14 Anyway, in the 20 years I've been with the bank, no one's ever asked me
15 where we were chartered. And they're talking about confusion. I think the
16 confusion has been cleared up here. The real confusion will be if you take
17 the name away. So I'm here to ask you to let us keep this name. We've
18 done a great job. We've done a lot of other things community-wise. We --
19 the law school is part of it.

20 Bill Boyd -- we have a program that we started in the schools, Nevada
21 school, called "No Place for Hate." We've trained 70,000 children in Clark
22 County, under our guys, under the ADL, against bullying and hate. With
23 100,000 members of law enforcement. We're a good bank. We're a good
24 people. Don't take our name away. We need it. And I think it'll make it a
25 lot easier for everybody. Thank you.

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1 Marshall: Thank you. Any questions, Mr. Martin?

2 Martin: No.

3 Marshall: Thank you very much.

4 Guedry: Good afternoon, Madam Chair. Committee, thank you for your time this
5 afternoon. My name is John Guedry and I'm president of the Bank of
6 Nevada, a division of Western Alliance Bancorp. I'm going to read a couple
7 of comments on three topics that were discussed. And I'll read them
8 quickly.

9 Since the state's using common sense as evidence -- and I'm not a lawyer.
10 I'm just -- I'm not a brilliant lawyer, I'm just a dumb banker. But I'm going
11 to use some common sense in my comments, but also let me touch on a little
12 bit of evidence. Mr. Pope had referred to Bank of Nevada entity being
13 disappeared. Well, that happens every day. Companies close down,
14 transfer assets, the owners stay the same, the names stay the same, the
15 customers stay the same. And then we underwrite these companies, the
16 businesses that were operating under one name and for various reasons, tax
17 and other reasons they may roll their assets into another entity.

18 And that's what's happened here. And as Governor List suggested, under
19 federal statute we're required to disclose to our customers that we're no
20 longer existing as Bank of Nevada. So we're chartered now as Bank of
21 Nevada, division of Western Alliance Bancorp. So I don't think there will
22 be any confusion with the customers. I know there won't. In regards to that
23 we are a division of another company.

24 The second point I want to make is there's a lot of discussion about how
25 confusing this would be to our customers if we were allowed to continue to

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1 operate under this name. The state said by allowing Bank of Nevada to
2 continue using the name it would confuse customers. Yet, we cited several
3 cases of nationally-chartered banks operating in Nevada, in some cases for
4 many years. And there wasn't one piece of evidence submitted by the state
5 of one customer that was misled to think that -- First Interstate Bank of
6 Nevada is one of those examples, was a Nevada-chartered bank.

7 I can tell you that since we announced this merger and sent notification out
8 to our customers and it's been discussed out in the community that there's a
9 potential name-change requirement. I fielded dozens of phone calls from
10 customers and internally from colleagues asking questions, such as will my
11 debit card have to change, will my credit card have to change, is my
12 password going to change, do I need new checks, is my banker going to be
13 the same, are you still going to be there? I promise you, if we're forced to
14 change this name, it'll be a lot more confusion to the thousands of customers
15 we serve than the community at large, especially since we're required to
16 disclose that we're a division of another company.

17 Finally, my final point has to do with value of the charter. Bank of Nevada
18 has been operating in southern Nevada for 20 years. And you heard from
19 the founders, many of the founders and board members about the history of
20 that company. I want to talk about a couple of specific things that are
21 specific to the community we serve.

22 Banks fall under the Community Reinvestment Act. We're required to
23 invest back into our community, specifically to the most vulnerable in our
24 communities, the low to moderate-income families that are hardest hit in
25 economic times like we've been going through. In that 20-year history, this

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1 bank has gone through multiple CRA exams by our regulator. And in all of
2 those exams, all but one, the bank received the highest rating it could
3 receive in the CRA exam. That doesn't happen, like I said. That's a
4 concerted effort on the part of the bank to serve those communities. We
5 serve them through investments, through loans, through volunteer time and
6 volunteer efforts that support those families in need. So this is a bank that
7 has served its community well. We have lent literally over a billion dollars
8 since we started this recession, here in this market place to predominantly
9 business owners. Last year alone in excess of 300 million. We'll top that
10 number again this year.

11 We're committed to this community. And to remove the brand -- to force
12 the bank to remove the brand, I think, would do more harm to the
13 community we serve than do good. Thank you.

14 Marshall: Thank you. Any questions for Mr. Guedry?

15 Martin: No.

16 Marshall: Thank you very much.

17 T. Marshall: Hello. Good afternoon. I'm Todd Marshall. I'm also a founding director of
18 the bank. I'm also the chairman of the Marshall Retail Group. The Marshall
19 Retail Group partners with over a dozen brands, such as Harley Davidson,
20 Planet Hollywood and over 130 stores and casinos and airports.

21 In today's world branding is everything. It inspires consumer confidence
22 and loyalty, very important components in the banking business. We have
23 worked very hard over the years to preserve, protect and make our brand,
24 Bank of Nevada, stand for stability and consistency in not only good times,
25 but in some very tough times, as well.

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1 Our name, our brand is just as important to us as any hotel, restaurant,
2 airline or clothing store. We all trade on the strength and reputation of our
3 brand. Our thousands of Nevada customers are accustomed to and loyal to
4 the Bank of Nevada. To force us to change our name would be unfair to the
5 bank and cause unnecessary confusion to our customers. Thank you.

6 Marshall: Any questions, Mr. Martin?

7 Martin: No questions.

8 T. Marshall: Thank you.

9 Marshall: Thank you. Okay. Are there any other public comments with respect to
10 Agenda Item No. 2? In Vegas?

11 Martin: None down here, no.

12 Marshall: Okay. So, Board members, what do you -- how do you feel about the whole
13 thing?

14 Wallin: How do we feel about it? Well, I, you know, I keep going back -- the state
15 kept saying, well, the plain language of 657.058. And so I'm looking at the
16 plain language there and I don't see where it says that you have to be
17 chartered in Nevada to have that name, okay? And when we got to 657.200,
18 where they talk about confusion. I tend to feel that changing the name
19 would create more confusion than keeping the name.

20 Marshall: Mr. Martin?

21 Martin: I would just concur with the comments of Controller Wallin.

22 Marshall: Okay. It seems to me that from a purpose of statutory construction, that if
23 the Financial Division is concerned that they would like to require the name
24 Nevada in any bank that is chartered in Nevada that they need to seek a
25 legislative enactment similar to 18 U.S. Code, Section 709, and apply that to

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1 the state.

2 The definitional terms here at the beginning of NRS 657 and including NRS
3 657.058 are meant to refer in my mind to the Chapter. If you were going to
4 read them otherwise, it ends up being confusing and you don't know
5 whether banks that do not use the name Nevada are then identified correctly
6 for being subject to the various provisions of the Chapter.

7 I would note that in a number of instances, not only the ones that I
8 mentioned during oral argument, but in other instances also the cases cited
9 by the Financial Institutions Division in their respondent's brief do not stand
10 for things they state that they stand for, which is a little disturbing. Because
11 you normally -- that doesn't lead to good things.

12 So it sounds like -- I ask Counsel, can we simply take a motion or -- I don't
13 know how -- I'm pretty sure no one here really wants to write an opinion.
14 So how do you want us to proceed on that part? Counsel?

15 Belcourt: Madam Chair, Dennis Belcourt. There's nothing in the regs. There aren't
16 any regs, no rules and procedures. We're talking about what the statute
17 says. It simply requires that you provide your view of the decision below.
18 There's no requirement for, you know, conclusions of law or any findings of
19 fact. So I think you can simply make a determination of action to take,
20 either to overturn or remand in the matter -- if you remand it, you identify
21 further action to take below. So for an appeal, you can make that decision
22 and that will be the decision of the board.

23 Marshall: And then, I mean, one of the reasons I keep referring back to laws in case
24 there's an appeal, so people have a record. Is it correct that whatever this
25 Board does, can then be appealed or is this final?

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- 1 Belcourt: There's nothing, no specific provision, I mean, typically there is some form
2 of appellate relief. It's either going to be under -- from a judicial review
3 under 233B or it's going to be an extraordinary writ. One of those two
4 options. Just from my experience that would apply, I don't know which
5 option will apply here because this doesn't neatly fit into -- but that's up to
6 the parties to actually decide, whoever is not the prevailing party.
- 7 Marshall: So I think then that if the Board members feel comfortable taking a motion,
8 if we word that motion very carefully.
- 9 Wallin: Mm-hmm.
- 10 Martin: Yes.
- 11 Marshall: As chair -- the chair doesn't normally word a motion.
- 12 Wallin: We've got the attorney here. We'll let you do it.
- 13 Marshall: Okay. Let's -- where's the...so is it okay if I make a motion then, Counsel?
- 14 Belcourt: Yes.
- 15 Marshall: So with respect to the Order denying petition for approval to operate the
16 Nevada branches of a non-Nevada bank under the name Bank of Nevada,
17 such Order being issued by the Commissioner of Financial Institutions dated
18 February 5, 2014, I make a motion to overturn that based on statutory
19 construction of NRS 657.058. And further on the statutory construction of
20 NRS 657.200, such that the term Nevada is meant to define how it will be
21 used in the statute and we would expect customers to be able to use
22 reasonable care with respect to identifying whether an institution was
23 chartered in Nevada or -- read the print underneath -- chartered elsewhere.
- 24 Wallin: I'll second that.
- 25 Marshall: Okay. Does that sound all right?

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1 Martin: As long as that means -- as long as all that means that they can use the
2 name, then I'm with you.

3 Marshall: All right. I hope that's what I said. I said it's overturned. Is there any
4 discussion? I respect that the Financial Institutions Division has worked
5 very, very hard. Mr. Pope, I know you have a lot work. I know you have
6 other agencies. I know that you are overworked, underpaid and half the
7 time on furlough. And I appreciate all that you've done, but really if the
8 Division wants this, they probably need to go to the legislature. Okay? But
9 I thank you for your efforts.

10 Pope: Thank you.

11 Marshall: All right.

12 Mathers: Dennis, was that a proper recording of the vote?

13 Marshall: No. I didn't take a vote. That was discussion.

14 Mathers: Okay.

15 Marshall: So all those in favor say aye.

16 Wallin: Aye.

17 Marshall: Aye.

18 Martin: Aye.

19 Marshall: Any opposed? Motion carries. All right. Moving to Agenda Item No. 3, is
20 there any public comment? More public comment? Hearing none, we are
21 adjourned. Thank you very much.